UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte JAMES ALLEN CLARK and JOHN ROBERT HORROBIN

_____

Appeal 2009-006356
Application 09/864,360[1]
Technology Center 2400

_____

Before KENNETH W. HAIRSTON, MARC S. HOFF,
and THOMAS S. HAHN, *Administrative Patent Judges.*

HOFF, *Administrative Patent Judge.*

DECISION ON APPEAL[2]

_____

[1] The real party in interest is James Allen Clark, John Robert Horrobin, and
CISCO Technology Inc.
[2] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.R.F § 1.304, or for filing a request for rehearing, as
recited in 37 C.R.F. § 41.52, begins to run from the "MAIL DATE" (paper
delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode)
shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-7, 9-12, 14-16, and 18-40. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' invention relates to a video distribution network including a network termination unit that detects, stores, and transmits use patterns of a user viewing display signals in the form of use pattern packets back to a head end. In addition, the network termination unit detects, stores, and transmits the services available information in the use pattern packets back to the head end. The head end includes a content analyzer coupled to receive the use pattern packets for analysis of the use patterns (Spec. 5:3-24).

Claim 1 is exemplary:

1.   A network termination unit, comprising:
        a port operable to receive content signals;
        a demodulator operable to demodulate the content signals into demodulated content signals;
        a decoder operable to decode the demodulated content signals into display signals; and
        a module operable to:
                extract content identifying data associated with a particular content signal of the content signals from that particular content signal,
                detect use patterns of a user viewing display signals on a viewing device,
                transmit the use patterns as use pattern packets,
                detect services available information, the services available information indicating an availability of services at the network termination unit, and
                transmit the services available information in the use pattern packets.

The prior art relied upon by the Examiner in rejecting the claims on
appeal is:

Teich	US 6,088,826	Jul. 11, 2000
Seidman	US 6,298,482 B1	Oct. 2, 2001
Zintel	US 6,779,004 B1	Aug. 17, 2004

Claims 1-5, 7-11, 14, 15, 18-31 and 40 stand rejected under 35 U.S.C.
102(e) as being anticipated by Seidman.

Claims 6, 12, and 16 stand rejected under 35 U.S.C. 103(a) as being
unpatentable over Seidman in view of Zintel.

Claims 32-39 stand rejected under 35 U.S.C. 103(a) as being
unpatentable over Seidman in view of Teich.

Rather than repeat the arguments of Appellants or the Examiner, we
make reference to the Appeal Brief (filed February 14, 2008), the Reply
Brief (filed July 14, 2008), and the Examiner's Answer (mailed May 14,
2008) for their respective details.

ISSUE

The Examiner finds that Seidman discloses a set-top-box (STB) which
monitors use patterns and user interest data for transmission in use pattern
packets, wherein each use pattern packet includes a network packet header
(Ans. 9). The Examiner finds that Seidman discloses that these packets are
periodically transmitted to the head end or transmitted to the head end in
response to an instruction from the head end sent to the STB (Ans. 9). The
Examiner finds that the head end identifies the payload of the packets for the

purpose of customizing the delivery of various services or content based on the received information within the packets (Ans. 9).

Appellants argue that Seidman does not teach a module operable to transmit the services available information *in the use pattern packets* (App. Br. 9 (emphasis added)).

The Examiner's findings and Appellants' contention present us with the following issue:

Does Seidman disclose a network termination unit that includes a module that transmits use patterns and service availability information in the form of use pattern packets?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1.   According to Appellants, the invention relates to a video distribution network including a network termination unit that detects, stores, and transmits use patterns of a user viewing display signals in the form of use pattern packets back to a head end. In addition, the network termination unit detects, stores, and transmits the services available information in the use pattern packets back to the head end. The head end includes a content analyzer coupled to receive the use pattern packets for analysis of the use patterns. (Spec. 5:3-24).

Seidman

2.   Seidman discloses that periodic historical reports of the user's viewing history are sent from the STB to the head end through the STB output port 8 (col. 6, ll. 38-45).

3.   Seidman discloses that viewer profile information is contained within a viewer response system (VRS) historical report and is sent to the head end from the STB wherein a variety of viewing session types are offered to the user including, for example "academic" and "entertainment." Further the viewer profile information includes rating information 62, designating what material is appropriate for the user. The user's selection of the rating information 62 from the STB is communicated to the head end to prevent the transmission or display of offensive material (Figs. 1 and 4-7; col. 7, l. 55-col. 8, l. 11).

4.   Seidman discloses audio and video streams are multiplexed together in a transport stream in the form of transport stream packets to be sent downstream from the head end to the STB. Data is sent upstream through the public service telephone network (PSTN), wherein the user's home phone line may be used simultaneously for VRS messages and for regular voice phone service (col. 10, ll. 28-54).

Dictionary definition of "PSTN"

5.   (Public Switched Telephone Network) The worldwide voice telephone network. Also called the "plain old telephone system" (POTS) which originally was solely analog. It is synonymous with *PSTS* (Public Switched Telephone System) which is the generic term for the domestic public telephone network. Traditionally, the PSTN is a public utility providing a circuit-switched network optimized for voice communications.

Webster's New World Telecom Dictionary, Wiley Publishing Inc., 2010, http://www.yourdictionary.com/computer/pstn.

PRINCIPLES OF LAW

Anticipation pursuant to 35 U.S.C § 102 is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

On the issue of obviousness, the Supreme Court has stated that "the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416.

ANALYSIS

Claims 1-5, 7, 22-24, and 40

Independent claim 1 recites a network termination unit that includes a module operable to "transmit use patterns as use pattern packets" and "transmit the services available information in the use pattern packets." Independent claim 22 recites "a means for transmitting the use patterns and services available information as use pattern packets."

Although we agree that Seidman discloses that use data and services available information are transmitted back to the head end, we do not agree

that the information is sent in use pattern packets as required by the claim language.

Specifically, Seidman discloses that the selection history records (SHR) may include not only historical reports containing the selection history records but also viewer profile information (FF 3). A user may allocate a number of viewer profiles per user based upon categories, such as "academic" and "entertainment" (FF 3). These categories are sent in the viewer profile to the head end for modifying the content of programming transmitted to the STB. Therefore, we agree with the Examiner that this category information does represent services available information sent back to the head end (Ans. 3-4).

Seidman does not, however, disclose that the data sent to the head end is in the form of packets. Specifically, Seidman discloses that the path and the method of transmission of data sent in the downstream direction *differ* from that of data send in the upstream direction (FF 4). Data is sent *downstream* in *transport stream packets* wherein video and audio streams are multiplexed in a transport stream (FF 4 (emphasis added)), yet data is sent *upstream* in the form of *messages* (FF 4 (emphasis added)). Specifically, Seidman discloses that VRS uses the Public Service Telephone Network (PSTN) connected to port 8 to send VRS messages that include selection history reports and viewer profile information (FF 2 and 4). It is well known to those skilled in the art that the PSTN uses circuit switching technology and *not* packet switching technology (FF 5). Thus, *messages* containing use patterns and services available information are sent over the PSTN using a dedicated path or circuit and *not a packet*.

We find that Seidman does not teach all the limitations of representative claim 1. Thus, we find error in the Examiner's rejection of claims 1-5, 7, 22-24, and 40 under 35 U.S.C. § 102(e) as anticipated by Seidman, and we will not sustain the rejection.

Claims 9-11, 14, and 26-29

Independent claim 9 recites "a port operable to receive use pattern packets." Independent claim 26 recites "a means for receiving use pattern packets."

Appellants argue, as with respect to claim 1 *supra*, that the Examiner's rejection of claim 9 is improper because the Examiner must still consider the functional limitations of claim 9 even though the structural limitations of the processor of claim 9 are similar to that of the module of claim 1 (App. Br. 10).

As noted *supra*, we reversed the rejection of claim 1 and agree with Appellants that Seidman does not disclose the use of use pattern packets to transport use pattern and service availability information to the head end (App. Br. 9).

We thus find error in the Examiner's rejection of claims 9-11, 14, and 26-29 under 35 U.S.C. § 102(e) as anticipated by Seidman, for the same reasons expressed with respect to the § 102 rejection of parent claim 1, and we will not sustain the rejection.

Claims 15, 21, and 30

Independent claim 15 recites "transmitting the use pattern packet." Independent claim 30 recites a similar claim limitation.

Appellants argue, as with respect to claim 1 *supra* that in finding that claim 15 is composed of the same structural elements as claim 1, the Examiner has neglected to address each and every element of claim 15.

As noted *supra*, we reversed the rejection of claim 1 and agree with Appellants that Seidman does not disclose the use of use pattern packets to transport use pattern and service availability information to the head end (App. Br. 9). We therefore reverse the Examiner's rejection of claim 15 under 35 U.S.C. § 102, for the same reasons expressed with respect to the § 102 rejection of parent claim 1, *supra*.

We find that Seidman does not teach all the limitations of representative claim 15. Thus, we find error in the Examiner's rejection of claims 15, 21, and 30 under 35 U.S.C. § 102(e) as anticipated by Seidman, and we will not sustain the rejection.

Claims 18-20, 25, and 31

As noted *supra*, we reversed the rejection of parent claims 15, 22, and 30, agreeing with Appellants that Seidman does not disclose the use of use pattern packets to transport use pattern and service availability information to the head end (App. Br. 9). We therefore reverse the Examiner's rejection of claim 18 under 35 U.S.C. § 102, for the same reasons expressed with respect to the § 102 rejection of parent claim 15, *supra*.

We find that Seidman does not teach all the limitations of representative claim 18. Thus, we find error in the Examiner's rejection of claims 18-20, 25, and 31 under 35 U.S.C. § 102(e) as anticipated by Seidman, and we will not sustain the rejection.

Claims 6, 12, and 16

As noted *supra*, we reversed the rejection of claims 1, 9, and 15 from which claims 6, 12 and 16 depend, respectively. We therefore reverse the Examiner's rejection of claims 6, 12, and 16 under 35 U.S.C. § 103, for the same reasons expressed with respect to the rejection of parent claims 1, 9, and 15, *supra,* and for the additional reason that the teachings of Zintel do not cure the noted shortcoming in the teachings of Seidman.

Claims 32-39

As noted *supra*, we reversed the rejection of claim 30 from which claims 32-39 depend, respectively. We therefore reverse the Examiner's rejection of claims 32-39 under 35 U.S.C. § 103, for the same reasons expressed with respect to the rejection of parent claim 30, *supra,* and for the additional reason that the teachings of Teich do not cure the noted shortcoming in the teachings of Seidman.

CONCLUSIONS

Seidman does not disclose a network termination unit that includes a module that transmits use patterns and service availability information in the form of use pattern packets.

ORDER

The Examiner's rejections of claims 1-7, 9-12, 14-16, and 18-40 are reversed.

<u>REVERSED</u>

ELD

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